No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia (R. 35-41) is reported at 75 Wash. Law Rep. 982, 54 A. 2d 747. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 43-49) is reported at 171 F. 2d 8.

JURISDICTION

The judgment of the Court of Appeals was entered on September 27, 1948 (R. 49). The peti-

tion for a writ of certiorari was filed on December 21, 1948, and was granted on March 14, 1949 (R. 51). The jurisdiction of this Court rests upon 28 U. S. C. sec. 1254.

QUESTION PRESENTED

Whether the United States, in its capacity as owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on such housing without complying with the standards and procedures prescribed by that Act.

STATUTES INVOLVED

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883; sections 2, 3, 4, 5, 10 and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610 and 1611; sections 1(c), 2(b) and 302(d) and (h) of the Emergency Price Control Act of January 30, 1942, 56 Stat. 23; and sections 202(a) and 209(b) of the Housing and Rent Act of June 30, 1947, 61 Stat. 193, so far as here material, appear in the Appendix, *infra*, pp. 32-42. Section 7 of the Act of October 14, 1940, 54 Stat. 1125, 1127, as amended, 42 U.S.C. 1544; section 6 of the Act of January 21, 1942, 56 Stat. 11, 12; and section 5 of the Act of June 28, 1941, 55 Stat. 361, 363, are quoted from at pp. 17-18; *infra*.

STATEMENT

On October 15, 1946, the United States filed in the Municipal Court for the District of Columbia an amended complaint for possession of real estate (R. 8-9), in which it was alleged that the United States was entitled to possession of certain premises located in the District of Columbia, held by the defendant without right, and that the defendant was in possession of these premises as a month-to-month tenant of the plaintiff.

The complaint stated that the property involved consists of a housing unit in a defense housing project known as Bellevue Houses which is owned by the United States and was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883; and that under the authority of section 201 of the 1941 Act, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C. 1544, and Executive Order 9070, 7 Fed. Reg. 1529, the management and administration of Bellevue Houses were transferred to the National Housing Administrator. It was further alleged that the Administrator by lease delegated such authority and management to the National Capital Housing Authority; that the defendant entered into possession during August 1946,[1] upon payment of a

[1] This was a typographical error. In his answer respondent alleged that he entered into possession in 1943 (R. 12). The actual date does not have any bearing on the issues before this Court.

monthly rental of $38.20; that the rent was subsequently raised to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriation Act, 1941, and section 7 of the Lanham Act; that the defendant refused to execute a lease calling for the new rental and refused to pay such rental; that a thirty-day notice to quit was served upon the defendant on February 28, 1946, terminating the tenancy, and that the increase in rent was made without regard to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code 1601-1611. The amended complaint also alleged that the ground upon which possession was sought was that the tenancy was terminated by the notice to quit served upon the defendant as required by 45 D. C. Code 902.

In pretrial proceedings (R. 13-17) the parties stipulated that the action by the United States is grounded upon notice to quit; that the premises are housing accommodations in the District of Columbia; that no breach of covenant is involved, that the housing was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940; that in 1941 the United States

took title to the premises; and that the notice to quit, dated February 25, 1946 (Pltf. Ex. 3, R. 17), was received by the defendant.

The parties having stipulated that the cause might be finally disposed of by the court upon the pleadings, the pretrial stipulation, and certain exhibits, the Municipal Court on April 18, 1947, filed a memorandum (R. 33-35) in which it dealt with and rejected all of defendant's requested findings which were based on various defenses, including the argument that the suit should be dismissed for failure to comply with the District of Columbia Emergency Rent Act. So far as here material, the court found that it had jurisdiction of the cause, and that the District of Columbia Emergency Rent Act does not apply. On April 21, 1947, the trial court entered an order awarding possession to the Government (R. 35). Defendant appealed to the Municipal Court of Appeals for the District of Columbia, which affirmed in all respects (R. 35-41).

On September 20, 1947, under the provisions of Title 11 D. C. Code 773, respondent petitioned the Court of Appeals for the District of Columbia Circuit for allowance of an appeal.[2] While respondent there sought a review of all questions decided by the Municipal Court of Appeals, the Court of

[2] The allowance of an appeal under this section is not a matter of right but of sound discretion (Rule 1 of the Rules of the United States Court of Appeals for the District of Columbia Circuit governing Review of Cases from the Municipal Court of Appeals).

Appeals, on January 16, 1948, allowed an appeal limited to two questions (R. 42). On September 27, 1948, the Court of Appeals disposed of the first question by sustaining the jurisdiction of the Municipal Court. However, the judgment was reversed upon the second issue, the Court of Appeals holding that the United States was subject to the restrictions imposed by the District of Columbia Emergency Rent Act on suits for recovery of possession of real property in the District of Columbia (R. 43-49). Accordingly, the judgment of the Municipal Court of Appeals was reversed and the cause was remanded to the latter court with instructions to enter orders in accordance with the opinion (R. 49).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the United States is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on defense housing owned by it and situated in the District of Columbia without complying with the standards and procedures prescribed by that Act.

2. In reversing the judgment of the Municipal Court of Appeals for the District of Columbia.

SUMMARY OF ARGUMENT

The language, history and policy of the statutory provisions relating to public housing projects owned and managed by the United States in the

District of Columbia show that Congress did not intend that the administration of such projects should be confined within the procedural and other limitations imposed by the District of Columbia Emergency Rent Act.

A. The National Capital Housing Authority administers two types of housing pursuant to various federal statutes. In the case of low-rent housing, the basic rental is ordinarily fixed on an economic or cost rent basis. In the case of tenants whose income is such that they cannot pay the economic rental, the difference is supplied by Government subsidy. All rentals are based upon the tenant's income. Any rental charge exceeding the economic or cost rent is designed merely to encourage the search for private housing, and therefore may approximate the rent for comparable private housing. The second type of housing—defense housing—was constructed under various statutes, some of which were passed subsequent to the enactment of the District of Columbia Emergency Rent Act, which vested authority as to rentals in the federal officials managing the property and limited occupancy to defense workers.

The Government is not, of course, operating such projects for a profit. The primary consideration in the administration of both types of housing is to provide adequate housing for needy families, and at rentals gauged to their capacity to pay.

B. The District of Columbia Emergency Rent Act does not mention the United States or its

housing properties, but merely defines the term "landlord" in general terms. Under familiar rules of construction, a provision drafted in such terms does not apply to the United States, unless there are affirmative reasons for believing that Congress so intended. Here, on the contary, all the available legislative materials affirmatively point the other way.

The avowed purpose of the Act is to prevent "profiteering and other speculative and manipulative practices by some owners of housing accommodations." The committee reports and the debates show clearly that private, not Government, housing was the concern of Congress in enacting the statute. The statute also provides criminal punishment for landlords violating the statute, and for suits against landlords for double the amount of unlawful rent increases together with attorneys' fees and costs. "These considerations, on their face, obviously do not apply to the Government as an employer [landlord]." *United States* v. *Mine Workers*, 330 U. S. 258, 274.

Moreover, the basic rental level fixed by the local Emergency Rent Act is the rental actually received for housing accommodations on January 1, 1941, which Congress regarded as a date upon which rentals were fairly arrived at by private bargaining in a competitive market. The rentals on Government housing, as has already been noted, are not so fixed. Federal rentals are determined pri-

marily by reference to the changes in economic status, family conditions, etc., of the tenants. The Rent Act cannot harmoniously be applied to this method of operation since it specifies entirely different criteria for determining when rental increases are justified—criteria which are relevant as to private but not to federal housing.

C. The Emergency Price Control Act of 1942, 56 Stat. 23, rather than supporting the view of the court below that the District of Columbia Emergency Rent Act was intended to apply to federal housing supports the opposite conclusion. That Act left control of rentals of the property here involved in the hands of the National Capital Housing Authority, subject only to control by the National Price Administrator. In the Housing and Rent Act of 1947, 61 Stat. 193, Congress removed Government housing from the control vested in the National Price Administrator, and expressly placed complete authority and control in the federal agency managing such housing.

ARGUMENT

Congress did not intend that the District of Columbia Emergency Rent Act should apply to defense housing owned by the United States

The property in suit is owned by the United States and was leased to respondent on a month-to-month basis. Unless the District of Columbia Emergency Rent Act is applicable, the United States had an unquestioned right to repossess the

property by the giving of the thirty-day notice to quit.

The Court of Appeals held that the restrictions imposed by the Emergency Rent Act (45 D. C. Code, sec. 1601, *et seq.*) are applicable in this case. Section 1605 of that Act (pp. 36-37, *infra*) provides that no action to recover possession may be maintained "so long as the tenant continues to pay the rent to which the landlord is entitled," unless certain procedure has been followed, which was not done here. The rental increase here involved was not submitted to the local Rent Administrator for his approval under the District of Columbia Emergency Rent Act.[3]

This case squarely presents the question, therefore, whether the National Capital Housing Authority, an agency of the United States, in its capacity of owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence is subject to all the provisions of that Act which Congress has made applicable to private landlords. The Government respectfully submits that the language, history, and policy of the relevant statutory provi-

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[3] There is nothing in the record to support a conclusion that this rent increase was in any respect arbitrary and unwarranted. Actually, the increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947) page 31.

sions show that Congress did not intend that rent controls with respect to defense housing owned by the United States within the District of Columbia should be administered by a local administrative official appointed by the Commissioners of the District of Columbia, under a statute prescribing standards which are manifestly inapplicable to Government-owned defense housing, the rentals for which are fixed on a basis entirely different from that ordinarily used by private landlords. The question of statutory construction in this case is not, as the Court of Appeals evidently believed, whether Congress intended that rentals fixed by the National Capital Housing Authority should be entirely free of any review by a higher authority. It is, rather, whether Congress intended that the Rent Administrator of the District of Columbia should be the reviewing authority, and that he should exercise such review within the framework of the standards and procedures contained in the District of Columbia Act—or whether, as we believe to be clear from the relevant legislative materials, Congress intended that the National Capital Housing Authority should, in its management and operation of defense housing, carry out the public housing policies established by Congress and the President, and that the validity of its actions is to be determined against the background of the provisions of law which govern its functions and from which its authority is derived.

A. *The functions of the National Capital Housing Authority.*—The National Capital Housing Authority[4] was created in 1934 pursuant to the Alley Dwelling Act of June 12, 1934, 48 Stat. 930,[5] for the purpose of eliminating alley dwellings in the District of Columbia. This program contemplated the destruction of sub-standard alley dwellings and, in some instances, the erection of improved dwellings which would be rented to the former tenants and others in similar economic circumstances. The National Capital Housing Authority is now administering 112 dwellings of this character "upon such terms and conditions as [it] may determine." All of these dwellings were rented on January 1, 1941, and there has been no attempt to increase the rent since that date. Tenancy, however, is restricted to persons of low income, and under the policies of the National Capital Housing Authority it may be necessary, when the size of a family increases or decreases, to effect a transfer to another dwelling of appropriate size.

The Alley Dwelling Act was amended by the Act of June 25, 1938, 52 Stat. 1186, 5 D. C. Code, secs. 103-116, by adding Title II to the Act. Title II authorized the National Capital Housing Authority to operate low-rent housing pursuant to

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[4] The organization was first known as the Alley Dwelling Authority. Its name was changed in 1943 to National Capital Housing Authority by Executive Order 9344, 8 Fed. Reg. p. 6805.

[5] For a history of the Authority see 11 Fed. Reg. 10111.

the United States Housing Act of September 1, 1937, 50 Stat. 888, as amended, 42 U.S.C. secs. 1401 to 1430, which authorizes the making of loans to local authorities for the purpose of providing low-rent housing accommodations. That Act provides (Sec. 2):

> The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this Act shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them of heat, light, water, and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.

Under this Act the National Capital Housing Authority manages 3147 dwellings in the District of Columbia for families of low income.[6]

Many of the tenants who are eligible to occupy low-rent housing under the above provision are not able to pay a rent which would return to the Government the full cost of construction and opera-

[6] The functions of the United States Housing Authority had been transferred to the Federal Public Housing Authority by Executive Order 9070, 7 Fed. Reg. p. 1529, 50 U.S.C.A. War App. sec. 601 note, p. 206, and are now vested in the Public Housing Administration by Reorganization Plan No. 3 of 1947, 12 Fed. Reg. 4981, 61 Stat. 954, 5 U.S.C.A. sec. 133y-16.

tion even without any profit. Accordingly, in the operation of federal low-rent housing, those who can afford it pay an economic or cost-rent. However, a graded rent system was established under which tenants unable to pay the cost or economic rent pay a lesser amount based upon their income and the size of the families. The difference between the graded rent and the cost or economic rent is made up by a subsidy from the federal Government and by exemption from local real estate taxes. Under this graded rent system, as the financial situation of a tenant progresses his rent is increased accordingly. Moreover, the size of the dwelling to be occupied is determined according to the number of persons to be housed. Thus, the transfer of a tenant to a dwelling of another size may be required as the family increases or decreases in size. When a tenant's income exceeds the allowable maximum (which is now $3,000 per year) he is "graduated" to private housing as soon as it can be found at a rental which he can afford. To stimulate the search for private housing by these over-income tenants, rents for them "comparable" to what they might have to pay for similar accommodations in private housing are established and the rent scale is extended upward above the cost or economic rent level. The maximum which a tenant may be required to pay can never be higher than the "comparable rent," and is in most instances lower.[7]

[7] A description in detail of the basis for rentals and the method of administration of such housing is to be found in the

The basic difference between a rental fixed pursuant to a welfare program of furnishing decent living accommodations to families of low income and a rental fixed in a competitive market was recognized in *United States* v. *Hansen*, 143 F. 2d 7, 9 (C.A. 7) and *Northwood Apartments* v. *Brown*, 137 F. 2d 809, 815 (Em. Ct. App.). Congress itself has recognized the essential difference between public low-rent housing and private housing. The District of Columbia Redevelopment Act of 1945, 60 Stat. 790, provided in section 3(f) with regard to housing constructed under the Act:

> "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

And by section 3(k) a formula was provided for fixing rentals, based upon ascertainment of a low-income group, and the application of that formula was entrusted to the Commissioners for the District of Columbia.

Annual Report of the National Capital Housing Authority for the year ending June 30, 1947, pp. 5-10. Congress had been similarly informed of management policy in the Annual Report of the Alley Dwelling Authority, now the National Capital Housing Authority, for the year ending June 30, 1941, pp. 6-9, Appendix, pp. 1-7.

In addition to the low-rent housing, there are 4,559 dwellings in the District of Columbia classed as "defense housing". The Bellevue Houses containing 601 units fall in this class. They were constructed under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883 (pp. 32-33, *infra*), which authorized the Secretary of the Navy to rent housing so constructed to defense workers with families, including military personnel, employed in naval establishments in that area. The Bellevue Houses were later transferred to the National Housing Agency[8] pursuant to Executive Order 9070.[9] The administration of Bellevue Houses was then delegated to the National Capital Housing Authority by lease agreement (R. 29-30). Other defense housing was constructed under authority contained in the Urgent Deficiency Appropriation Act, 1941, 55 Stat. 14, and the Lanham Act of October 14, 1940, 54 Stat. 1125, as amended, 42 U.S.C. secs. 1521, *et seq.*

Under these Acts, the National Capital Housing Authority developed a number of defense housing projects in the District of Columbia which it still administers. Other defense housing projects were developed by other agencies of the Government

[8] The functions of the National Housing Agency were transferred to the Housing and Home Finance Agency by Reorganization Plan No. 3 of 1947, 12 Fed. Reg. 4981, 61 Stat. 954, 5 U.S.C.A. sec. 133y-16.

[9] 7 Fed. Reg. p. 1529, 50 U.S.C.A. War App. sec. 601 note, p. 206.

and were later transferred to the National Capital Housing Authority for administration.

The most comprehensive of the statutes authorizing defense housing is the Lanham Act. Section 7 of the Act as originally enacted authorized the Federal Works Administration to rent "any property acquired or constructed under the provisions of this Act." The second proviso of that section reads as follows:

> *Provided further,* That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be within the financial reach of persons engaged in national defense

Section 7 was subsequently renumbered to become section 304. Act of June 28, 1941, 55 Stat. 361, 363. Of course, this was before passage of the District of Columbia Emergency Rent Act. However, section 6 of the Act of January 21, 1942, 56 Stat. 11, 12, enacted shortly after the passage of the local Emergency Rent Act, amended the second proviso of renumbered section 304 to read as follows:

> *Provided further,* That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that rentals to be charged for Army and Navy personnel shall be fixed by the War and Navy Departments.

The Bellevue Houses property here in question, while defense housing, was not constructed under the Lanham Act, but as already noted, was constructed pursuant to section 201 of the Second Supplemental National Defense Appropriation Act, 1941 (pp. 32-33, *infra*). However, by section 5 of the Act of June 28, 1941, 55 Stat. 361, 363, Congress specifically provided:

> The departments, agencies, or instrumentalities, administering property acquired or constructed under section 201 of the Second Supplemental National Defense Appropriation Act, 1941 [the statute under which the instant property was constructed], shall have the same powers and duties with respect to such property and with respect to the management, maintenance, operation, and administration thereof as are granted to the Federal Works Administrator with respect to property acquired or constructed under title I of such [Lanham] Act of October 14, 1940, and with respect to the management, maintenance, operation, and administration of such property so acquired or constructed under such title.

A provision almost identical with that just quoted and applying to housing constructed under the Urgent Deficiency Appropriation Act, 1941, is found in section 10 of the Act of January 21, 1942, 56 Stat. 11, 13. This clearly shows that Congress intended to vest in the agency managing the instant property the same powers over the housing here in

question as were vested in the Federal Works Administrator over Lanham Act property.

Thus, neither low-rent housing projects, nor defense housing projects, are operated for profit. In both instances, the primary considerations controlling the operation of these projects so as to serve the public interest in providing needed low-rent housing are the financial status of the tenants, and, in the case of defense projects, their employment in defense industry or the military services. In order to carry out the housing programs, adjustments in rentals, changes in premises occupied or eviction from the project are required from time to time as the status of each individual tenant changes either as to income, family size or employment.

B. *The language and history of the District of Columbia Emergency Rent Act.* The relevant provisions of the District of Columbia Emergency Rent Act are set forth in the appendix, *infra*, pp. 33-39. The term "landlord" is broadly defined in Section 11 of the Act to include "an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations." "Person" is defined to include "one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative therof." [10]

[10] The Act defines "housing accommodations" to mean "any building, structure or part thereof, or land appurtenant thereto,

At the outset of our inquiry into the meaning and effect of these words, we are aided by a principle of construction settled by a long series of decisions of this Court, namely, that the United States is not included within the restrictions imposed by general statute unless it is specifically named. *Dollar Savings Bank* v. *United States,* 19 Wall. 227, 239; *United States* v. *Herron,* 20 Wall. 251, 263; *United States* v. *American Bell Telephone Co.,* 159 U. S. 548, 554; *United States* v. *Stevenson,* 215 U. S. 190, 197; *United States* v. *Mine Workers,* 330 U. S. 258, 270, 272; *United States* v. *Wyoming,* 331 U. S. 440, 449. In the *Mine Workers* case, 330 U. S. at 272-273 this Court said: "There is an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect * * * [unless] there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute." And in the present case, we believe, there is clear and affirmative evidence that Congress did not intend to subject the United States, *qua* owner of defense housing, to the general restrictions imposed by the District of Columbia Emergency Rent Act.

The District of Columbia Emergency Rent Act became law on December 2, 1941, and so far as is

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or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia * * *." 45 D. C. Code 1611 (a).

here material its provisions have not been altered since that time. Section 1 of the Act, 45 D. C. Code, sec. 1601, sets out the objectives. It recites that the national emergency and the national defense program have increased housing congestion in the District of Columbia and "have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations," and that the purpose of the legislation is to prevent undue rent increases or other practices which tend to increase the cost of living or otherwise impede the national defense program.

The Court of Appeals stated (R. 46) that the law was not passed for the purposes of regulating the relationship between landlord and tenant, or "for a mere regulation of rents that they might be fair and reasonable. Its purpose was to prevent practices tending to increase the cost of living." But the "practices tending to increase the cost of living" which the Act was intended to prevent were unscrupulous profiteering and other speculative and manipulative practices by private owners who operated for profit. Thus, in reporting the bill which ultimately became the Emergency Rent Act, the House Committee on the District of Columbia stated (H. Rept. No. 1317, 77th Cong., 1st sess. p. 2): "The present demand for living quarters on the part of those whom the defense effort requires to live and work in Washington, has tempted some owners and managers of rental properties to

demand exorbitant rentals. * * * This bill is designed to protect * * * present and future tenants in the District of Columbia from the rent-gouging practices of a minority of the landlords." The same statement of purpose appears in the report of the Senate Committee on the District of Columbia (S. Rept. No. 827, 77th Cong., 1st sess., p. 3).

The debates on the bill contain further indications that it was aimed solely at private interests. In the House, Representative Randolph, in charge of the bill, observed that Washington real estate operators had stated that "there are groups that have come here from the outside exploiting those who are renting properties in the District of Columbia", and that "in some instances in Washington the local real estate interests have upped their rents unfairly, and in many instances there seem to be unjustifiable prices." (87 Cong. Rec., Pt. 8, p. 8448).

At another point in the House debate on the bill Chairman Randolph stated that tenants having a monthly income of $120 were paying 34 percent of that income for rent, whereupon the following colloquy ensued (*id.*, at p. 8449):

> Mr. Healey: Does the gentlemen personally know—and he has had a great deal to do with the District of Columbia—whether there are available for the thousands of persons in the $120 class housing at a price commensurate with the income they earn?

> Mr. Randolph: No; I do not think accommodations are adequate and we in the District Committee have been attempting through the low-cost housing here under the Alley Dwelling Authority to provide opportunities for the low-income group. That is being developed in certain sections here, but I am sure it is not nearly adequate to meet the need.

Thus, it was apparently the view of the Congressman in charge of the bill that if there had been sufficient federal housing in the District of Columbia, the low-income group of tenants would not have needed the protection afforded by the rent control legislation,

By the District of Columbia Emergency Rent Act, Congress clearly sought to make available privately owned housing accommodations at reasonable rentals. This was done to meet a situation where the demand for such accommodations so far exceeded the supply as to create a danger of avaricious activities on the part of some landlords. Congress recognized that regulation of private housing alone was not a complete solution to the problem of inadequate housing, and so it authorized construction of the property here involved and other defense and low-rent housing projects in the District of Columbia. Clearly, the two programs, the one to control rentals of private housing and the other to provide public housing at low-cost rentals, were independent means employed by the Government to attain a common end, and there is no basis

for implying an intention, never expressed by Congress, that the one program should restrict the other.

Moreover, the theory upon which the local Emergency Rent Act is constructed was to freeze rentals existing on January 1, 1941. This was on the assumption that rentals as of that date represented a fair rental as a result of bargaining by the parties in a competitive normal market. See 87 Cong. Rec. Pt. 8, pp. 8447, 8448, 8449, 8454. As the court below stated (R. 46), under the District of Columbia Emergency Rent Act "Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances', substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements." But, as has already been shown (*supra*, pp. 13-14), rentals established for federal housing were established on an entirely different basis. Freezing of rents on public low-rent housing at the levels such housing was rented for on January 1, 1941, is to apply the local Emergency Rent Act to a rent basis entirely different from that contemplated by Congress in enacting the statute.

The Rent Administrator of the District of Columbia, in determining whether increases should be permitted, must find justification in the landlord's increased costs or capital improvements, and the like. The Act would not permit increases of rental or change of premises as a result of an improve-

ment in the economic condition of a tenant or an increase in the size of his family. To apply the Emergency Rent Act to federal housing in the District would, therefore, require a complete revision in the method of administration of such development.[11]

Moreover, section 10 of the local Act (45 D. C. Code, section 1610, pp. 37-38, *infra*) provides civil and criminal penalties for landlords who violate the Act. On the civil side a landlord may be sued for double the amount of excess rent, plus attorneys' fees and costs. And on the criminal side punishment for violation of the Act is set at a maximum fine of $1,000.00 or imprisonment for not more than one year or both. "These considerations, on their face, obviously do not apply to the Government as an employer [landlord]." *United States* v. *Mine Workers*, 330 U. S. 258, 274. Yet, the decision of the Court of Appeals presumably subjects the United States to such penalties. The decision has already been so construed by the Municipal

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[11] We are advised that the Rent Administrator of the District of Columbia "has never contended the Rent Control Act of the District applied to the properties of the National Capital Housing Authority, as the rents have been fixed by the Authority on the basis of the ability of the tenant to pay rather than upon rents charged for comparable housing accommodations, which is the criterion fixed in the Rent Act for the determination of rentals by the Rent Administrator," and that if the decision below stands, "the Rent Administrator will be confronted with the almost impossible task, with his present force, of attempting to fix the rental on the approximately 8,000 rental units of the National Capital Housing Authority."

Court of the District of Columbia in *United States* v. *Kalstein*, No. L. & T. 242-947 (see Supplemental Memorandum of the United States on petition for certiorari).[12] It is fundamental that neither consent to sue the United States nor liability for costs can be founded upon anything less than clear and explicit statutory consent by Congress. *United States* v. *Shaw*, 309 U. S. 495, 503; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506, 513; *United States* v. *Chemical Foundation*, 272 U. S. 1, 20; *United States* v. *Worley*, 281 U. S. 339, 344.

C. *The relation of the District of Columbia Act to national rent control legislation.*—As has been noted, the District of Columbia Emergency Rent Act became law on December 2, 1941; and in section 6 of the Act of January 21, 1942 (*supra*, pp. 17-18), Congress had expressly placed control over rentals on federal defense housing in the hands of the federal agencies and officials responsible for the management of such properties.

Congress was at that time, and had been for some time previously, working on a national price control act, including regulation of rentals for housing accommodations. The result was the Emergency Price Control Act of January 30, 1942,

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[12] When the same Congress which enacted the local rent act two months later submitted the United States and its housing to possible rent control by the National Price Administration under the Emergency Price Control Act of 1942, it did so specifically, and expressly exempted the United States and its agencies from the punitive provisions of that Act. (See p. 9, *infra*).

56 Stat. 23 (pp. 39-42, *infra*). It would be surprising if in this Act, passed only nine days after the statute of January 21, 1942, Congress had departed from its policy of vesting control of rentals of federal housing in other than federal officials. But it clearly did not do so; and the Emergency Price Control Act of 1942, rather than justifying the court below in reading into the earlier local Act an intent to submit the United States and its housing to control by the local Rent Administrator, proves just the opposite.

Section 1(c) of that Act provided that its provisions "shall be applicable to the United States, its Territories and possessions, and the District of Columbia." Section 2(b) authorized the National Price Administrator to order a rent reduction for any "defense-rental area" housing accommodations. A sixty-day period was allowed for such reduction to be made effective by State or local regulation, or otherwise. This operated to stay the hand of the National Administrator to give opportunity for the reduction to be effected voluntarily by the owner, or, failing that, by state or local regulation in cases where such regulatory bodies had jurisdiction. "Defense-rental area" was defined in section 302(d) to include "the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for

housing accommodations inconsistent with the purposes of this Act." Section 302 (h) defined the word "person" as including "the United States or any agency thereof," with a proviso that "no punishment provided by this Act shall apply to the United States, or to any such * * * agency."

These provisions make it clear that when the Congress which enacted the local Emergency Rent Act later decided to submit the United States and its property to a restrictive statute, it did so specifically by express words. It is also clear that when, for the first time, Congress entrusted rental controls on federal housing to an authority other than the management officials, in the District as elsewhere, it conferred such authority on the National Price Administrator. And by regulation the National Price Administrator provided that rentals for housing outside the District of Columbia "constructed by the United States or any ageney thereof," should be the rental generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent rate, "as determined by the owner." (Rent Regulation for Housing, October 31, 1945, Section 4 (g), 10 Fed. Reg. 13528, 13530). Section 6(c)(2) of the same regulation (10 Fed. Reg. at 13534) provided that the rentals for housing outside the District of Columbia rented to Army or Navy personnel, including civilian employees of the War and Navy Departments should be the rents fixed by those

Departments. The Price Administrator apparently did not deem it necessary to exercise his control over such housing within the District of Columbia. And if he had done so, there is of course no reason to suppose that he would have dealt with the matter in any different way. It is reasonable to suppose that he would have fixed the rent levels at those set by the federal agencies actually administering federal housing property. Be that as it may, however, the decision of the Court of Appeals leads to the anomalous result that everywhere in the United States, except for the District of Columbia, the rents on federal housing, both low-cost and defense housing, are set by the officials or agencies managing the properties, but in the District alone these officers and agencies would be subordinated and subjected to control by a municipal official.

Prior to the amendment in 1947 of the Emergency Price Control Act of 1942, therefore, there could be no doubt that the authority of the National Price Administrator was paramount and exclusive with respect to Government-owned defense housing within the District of Columbia, and that the District of Columbia Emergency Rent Act could not be construed to give the District Administrator such authority. In 1947, when Congress modified federal rent controls, the Emergency Price Control Act was amended in several material respects. Section 202(a) of the Housing and Rent

Act of 1947, 61 Stat. 193, 50 U.S.C. App., Supp. I, 1881, does not include the United States or any of its political subdivisions in its definition of "person". The latter term was defined to include only "an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing." In thus terminating rental control over federal housing by the National Price Administrator, Congress made clear its intention to revest exclusive authority in the federal agencies and officials administering federal defense housing and other federal housing in the District of Columbia. It did so by providing in section 209(b) of the same act that "Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered."

The clear implication of the 1947 amendments to the national Act is that Congress intended to remove the limited rent control previously applicable to the United States under that Act and thereafter to vest management and control in the federal agencies administering federal housing properties.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment of the Court of Appeals be reversed and that the cause be remanded to that court with directions to affirm the judgment of the Municipal Court of Appeals for the District of Columbia.

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APPENDIX

I

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883, reads as follows:

> SEC. 201. To the President for allocation to the War Department and the Navy Department for the acquisition of necessary land and the construction of housing units, including necessary utilities, roads, walks, and accessories, at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purposes of this Act shall be construed to include activities of the Maritime Commission, where the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission shall certify that such housing is important for purposes under their respective jurisdiction and necessary to the national defense program, $100,000,000; *Provided*, That the average unit cost of such housing projects, including acquisitions of land and the installation of necessary utilities, roads, walks, accessories and collateral expenses shall not be in excess of $3,500: *Provided further*, That in carrying out the purposes of this section the Secretary of War and the Secretary of the Navy may utilize such other agencies of the United States as they may determine upon: *Provided further*, That

the Secretary of War and the Secretary of the Navy, at their discretion, are hereby authorized to rent such housing units, upon completion, to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs, including work on ships under the control of the Maritime Commission. * * *

II

Sections 2, 3, 4, 5, 10, and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610, and 1611, so far as here material, read as follows:

Section 2 (45 D. C. Code 1602). Maximum rent ceilings and minimum service standards.

(1) On and after the thirtieth day following the enactment of this chapter, subject to such adjustments as may be made pursuant to sections 45-1603 and 45-1604, maximum-rent ceilings and minimum-service standards for housing accommodations excluding hotels, in the District of Columbia shall be the following:

(a) For housing accommodations rented on January 1, 1941, the rent and service to which the landlord and tenant were entitled on that date.

(b) For housing accommodations not rented on January 1, 1941, but which had been rented

within the year ending on that date, the rent and service to which the landlord and tenant were last entitled within such year.

(e) For housing accommodations not rented on January 1, 1941; nor within the year ending on that date, the rent and service generally prevailing for comparable housing accommodations as determined by the Administrator.

Section 3 (45 D. C. Code 1603). General adjustment of maximum rent ceilings.

Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1941, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

Section 4 (45 D. C. Code 1604). Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise, since January 1, 1941, in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided*, That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

Section 5 (45 D. C. Code 1605). Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standard, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing. Nothing herein shall be construed to require the refund of any rent paid or payable for the use or occupancy of housing accommodations prior to the 30th day following the enactment of this chapter.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with and approved by the Commissioners of the District of Columbia.

Section 10 (45 D. C. Code 1610). Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling

and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the municipal court of the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) Any person who willfully violates any provision of this chapter or any regulation, order, or requirement thereunder, and any person who willfully makes any statement or entry false in any material respect in any document or report required to be kept or filed thereunder, and any person who willfully participates in any fictitious sale or other device or arrangement with intent to evade this chapter or any regulation, order, or requirement thereunder, shall be prosecuted therefor by the corporation counsel of the District of Columbia or an assistant, on information filed in the police court of the District of Columbia, and shall upon conviction be fined not more than $1,000 or imprisoned for not more than one year, or both.

Section 11 (45 D. C. Code 1611). Definitions. As used in this chapter—

(a) The term "housing accommodations" means any building, structure or part thereof,

or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property.

* * * * *

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

III

The Emergency Price Control Act of January 30, 1942, 56 Stat. 23, provided:

Section 1 (c):

The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

* * * * *

Section 2 (b):

Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act,

he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including in-

creases or decreases in property taxes and other costs within such defense-rental area. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

* * * * *

Sec. 302. As used in the Act—

* * * * *

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

* * * * *

(h) The term "person" includes individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no

punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

IV

The material portion of the Housing and Rent Act of 1947 approved June 30, 1947, 61 Stat. 193, provides:

Section 202 (a):

The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

* * * * *

Section 209 (b):

Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account or service-connected disability or disabilities, exceeds the allowable maximum.

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